D. Arbitration Tribunals

1. History and Development

Arbitration tribunals existed in the pre-Revolutionary period, and for a part of the 19th century were an obligatory form of resolution of disputes among members of partnerships and those concerning stock companies, as well as a means that could be used on the basis of an agreement of the parties. The possibility of use of an arbitration tribunal continued after the revolution only for private disputes and for some disputes on commodities exchanges. State bodies and state enterprises could not use the arbitration tribunals, and they disappeared as an option for domestic disputes with the implementation of a fully planned economic system. The possibility for the use of an arbitration tribunal reappeared at a later period connected to state arbitrazh,[23] but there appears to be little evidence that they were used frequently for economic disputes.

The 1991 Law on Arbitrazh Courts in the Russian Federation contained an article specifically authorizing the transfer of a dispute to an arbitration tribunal or to a mediator for resolution, on the basis of agreement of the parties.[24] The right to transfer a domestic dispute to an arbitration tribunal was preserved by the 1995 Law, although reference to mediation was eliminated.[25] There has been a significant growth in the number of arbitration tribunals, and by 1997 a study done for the arbitrazh courts stated that as many as 250 permanent arbitration tribunals existed in the Russian Federation, with more than 1500 arbitrators included on their lists.[26] Many of these tribunals, however, have narrow fields of specialty or exist for the purpose of dispute resolution in relation to a particular exchange or other institution. Only a few have broad, general jurisdictions.

Two special arbitration tribunals for disputes involving foreign persons or companies were created in the 1930s and continue to operate to the present day. One tribunal was

---

[19] Decision reported in Sobranie Zakonodatel'stva RF, 1998, No. 12, Item 1458.
[20] Decision reported in Sobranie Zakonodatel'stva RF, 1998, No. 42, Item 5211.
[21] Decision reported in Sobranie Zakonodatel'stva RF, 1996, No. 45, Item 5202.
[22] Decision reported in Sobranie Zakonodatel'stva RF, 1997, No. 1, Item 197.
[23] See, e.g., the Statute on Arbitration Tribunals, confirmed by State Arbitrazh of the USSR, Bulleten' Normativnykh Aktov SSSR [Bulletin of Normative Acts of the USSR], 1967, No. 6.
[24] See Article 7 of the 1991 Law "On the Arbitrazh Court."
[25] For disputes subject to the courts of general jurisdiction, the right to transfer a dispute to an arbitration tribunal for resolution is expressed in Article 27 of the Code of Civil Procedure.
[26] Vestnik Vyshshego Arbitrazhnogo Suda RF [Bulletin of the Higher Arbitrazh Court of the RF], 1997, No. 8, page 93.

established for maritime disputes and related claims (the Maritime Arbitration Commission — still functioning under that name), and the other for disputes arising out of foreign trade activities (the Foreign Trade Arbitration Commission — predecessor to the current International Commercial Arbitration Court under the Chamber of Commerce). The Soviet Union was a participant in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the Russian Federation became a participant upon the dissolution of the Soviet Union as its legal successor. In 1993, a general federal law "On International Commercial Arbitration" was passed, applying the requirements of the New York Convention to foreign arbitral decisions and establishing a similar regime for the treatment of decisions of arbitration tribunals in Russia concerning international commercial matters. The law also extended the ability of arbitration tribunals other than the long-established maritime and foreign trade tribunals mentioned above to undertake the resolution of international commercial disputes. It did not, however, equalize the treatment of domestic arbitration tribunals and those concerned with international commercial disputes and significant differences still exist concerning the two, especially with respect to enforcement proceedings.

2. Jurisdiction of Arbitration Tribunals

As a general rule, civil law disputes that are otherwise within the jurisdiction of either the arbitrazh courts or the courts of general jurisdiction may be transferred to an arbitration tribunal. There are several exceptions to this general rule. A dispute may not be submitted to an arbitration tribunal if it is assigned by law to the exclusive competence of a particular state body or a particular court. The substantive legislation concerning the particular type of dispute may prohibit transfer to an arbitration tribunal, as is the case, for example, with the bankruptcy legislation. The transfer of labor disputes and family-law disputes in general to arbitration tribunals is prohibited by the Civil Procedure Code.[27]

The jurisdiction of any arbitration tribunal is dependent upon the will of the parties and can only be established by an agreement between them. ***No type of dispute is generally assigned by law to an arbitration tribunal, and in the absence of an effective arbitration agreement, a dispute will be subject to the jurisdiction of the corresponding court, depending upon the nature of the dispute and the identity of the parties.*** The agreement between the parties to transfer the dispute can be either an arbitration clause in a contract or other agreement to which the dispute relates, or a separate, written agreement to transfer a specific dispute that has arisen.

With respect to international commercial disputes, the 1993 Law "On International Commercial Arbitration" defines the general limits of jurisdiction of arbitration bodies over such cases. That law defines the sphere of international arbitration as including two broad types of cases:

[27] Article 1 of Appendix 3 to the Civil Procedure Code.

1. Cases concerning contractual or other civil-law disputes arising out of foreign trade, where the place of business of one of the parties is located outside the Russian Federation; and

2. Cases in which an enterprise with foreign investments, international organization, or international association operating on the territory of the Russian Federation has a dispute with another such entity or with a domestic entity, and also cases concerning disputes among the founders of such enterprises, organizations or associations.

Many commercial disputes with which this Handbook is concerned will fall into one of these two categories, and the rules and procedures for international commercial arbitration are thus those that will be of most interest and concern. There remain, however, a number of points of confusion due to the existence of separate legislation concerning “domestic” and international arbitration, which are discussed in greater detail in Chapters 2 and 4.